

Before the  
Administrative Hearing Commission  
State of Missouri



JASON A. PRESCOTT,

Petitioner,

vs.

DEPARTMENT OF SOCIAL SERVICES,  
MO HEALTHNET DIVISION,

Respondent.

No. 11-2369 SP

**DECISION**

We grant the Department of Social Services, Mo HealthNet Division's ("the Department") motion to dismiss the complaint of Jason A. Prescott.

**Procedure**

On December 12, 2011, Prescott filed a complaint stating that he was adversely affected by a final decision of the Department assessing an overpayment. On December 21, 2011, the Department filed a motion to dismiss the complaint as untimely, accompanied by affidavits of Department personnel. After granting two motions for extension of time, Prescott responded on February 15, 2012.

We may grant a motion to dismiss if we lack jurisdiction.<sup>1</sup> Because the Department included matters outside the pleadings with the motion, we apply our standard for summary

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<sup>1</sup>Regulation 1 CSR 15-3.440(3)(B)2.

decision.<sup>2</sup> Under that standard, the Department prevails if it establishes facts that entitle it to a favorable decision and Prescott raises no genuine dispute as to such facts.<sup>3</sup>

### **Findings of Fact**

1. On October 31, 2011, the Department mailed by certified mail, return receipt requested, a final decision assessing a \$41,296 overpayment to Prescott (the “overpayment letter”).

2. The overpayment letter contains the following language:

This is a final decision regarding administration of the medical assistance program in Missouri. Missouri Statute, Section 208.156, RSMo (2000) provides for an appeal of this decision.

If you were adversely affected by this decision, you may appeal this decision to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within 30 days from the date of mailing or delivery of this decision, **whichever is earlier**; except that claims of less than \$500 may be accumulated until such claims total that sum and, at which time, you have 90 days to file the petition. If any such petition is sent by registered or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent by any method other than registered or certified mail, it will be deemed filed on the date it is received by the Commission.

(Emphasis added).

3. The letter was not delivered to Prescott until November 23, 2011. On December 12, 2011, this Commission received the complaint from Prescott. The complaint was sent by regular mail.

4. December 12, 2011 was more than 30 days after October 31, 2011.

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<sup>2</sup>Regulation 1 CSR 15-3.440(3)(A)3.

<sup>3</sup>Regulation 1 CSR 15-3.440(3)(B) and § 536.073.3. Statutory references are to RSMo 2000 unless otherwise noted.

## Conclusions of Law

We have jurisdiction of appeals from the Department's determinations denying reimbursement for Medicaid services.<sup>4</sup> But the legislature has restricted our jurisdiction to those appeals filed within the time limits set forth in § 208.156.8. "The failure to comply with the statutory time limitations for appeal from an administrative agency decision, whether to another administrative body or to a circuit court, results in the lapse of subject matter jurisdiction and the loss of right of appeal."<sup>5</sup> We may order involuntary dismissal of a complaint for lack of jurisdiction<sup>6</sup> and based on a preponderance of the evidence.

Section 208.156.8 provides:

Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 and who is entitled to a hearing as provided for in the preceding sections shall have **thirty days from the date of mailing** or delivery of a decision of the department of social services or its designated division in which to file his petition for review with the administrative hearing commission except that claims of less than five hundred dollars may be accumulated until they total that sum and at which time the provider shall have ninety days to file his petition.

(Emphasis added).

The Department has established by affidavit that it sent a notice of overpayment to Prescott by certified mail on October 31, 2011. Because the Department sent the denial letter by certified mail, the time to appeal started on October 31, 2011, with that mailing,<sup>7</sup> and ended on November 30, 2011. Prescott did not file the petition until December 12, 2011.

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<sup>4</sup>Section 208.156.2.

<sup>5</sup>*Fayette No. 1, Inc. v. Missouri Dept. of Social Services*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1993).

<sup>6</sup>1 CSR 15-3.436(1)(A).

<sup>7</sup>*R. B. Indus. v. Goldberg*, 601 S.W.2d 5, 7 (Mo. banc 1980).

We are a legislative creation. Thus, we have only the power the legislature has given us.<sup>8</sup> We have no jurisdiction to hear a petition filed out of time.<sup>9</sup> If we have no jurisdiction to hear the petition, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>10</sup> Because Prescott did not timely file its complaint, we grant the Department's motion and dismiss the complaint.

### Summary

We grant the motion to dismiss Prescott's complaint.

SO ORDERED on May 20, 2013.

/s/ Nimrod T. Chapel, Jr.  
NIMROD T. CHAPEL, JR.  
Commissioner

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<sup>8</sup>*State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

<sup>9</sup>*Community Fed. Sav. & Loan Assoc.*, 752 S.W.2d at 799.

<sup>10</sup>*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).